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UNITED STATES DEPT. OF JUSTICE

No. 379.

1957-1958

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Supreme Court of the United States

October Term, 1947.

No. 379.

GRAND RIVER DAM AUTHORITY, A PUBLIC
CORPORATION,

Petitioner,

v.

GRAND HYDRO, A PRIVATE CORPORATION, - *Respondent.*

BRIEF FOR RESPONDENT IN REPLY TO PETITION FOR REHEARING.

Without attempting an extensive reply, because of insufficient time and the lack of merit of the petition for rehearing, the respondent submits the following reasons for denial of the petition for rehearing. The paragraph numbers hereof correspond to the numbered arguments advanced in support of the petition for rehearing.

(1) The decision of the Federal Power Commission in Matter of the Niagara Falls Power Company, referred to in the petition, related to the Niagara River, as to which the Commission says, "Niagara River is a navigable water of the United States . . ." Pet. br. p. 17. Grand River, which is involved in the case

at bar, is non-navigable, and therefore the Commission's opinion is not in point.

Moreover, the Niagara opinion of the Commission adds no new law to that heretofore presented, in briefs, to this Court upon the petition for writ of certiorari. The Commission's opinion cites no pertinent authority that has not been presented to this Court in argument in briefs.

Even if the claimed variance between the Commission's decision and that of the Oklahoma Supreme Court in this case actually existed, this would not be ground for granting certiorari, because the decision of the Oklahoma Court is correct as shown by our briefs heretofore filed, and also because such variance between the holding of a mere administrative body of the United States and a holding of a state supreme court is not ground for granting certiorari.

Petitioner complains (p. 5) that the award of \$800,000 substantially exceeds the amount or amounts at which it could have compromised this case, and that the United States was responsible for the failure to compromise. This is irrelevant to the respondent's rights. Moreover, evidence of compromise figures is inadmissible under Oklahoma law. *Grooms v. Johnson*, 192 Okla. 527, 138 P. 2d 98. The trial court repudiated a similar effort, made by petitioner in argument upon its motion for new trial, to have the record show the figures suggested in compromise negotiations (R. 632-642). Finally, petitioner's statements and affidavits concerning the compromise negotiations are very substantially inaccurate.

(2) There is no evidence in the record with respect to the petitioner's land holdings at Markham's Ferry, its rights to build a dam there, whether that site is adaptable to the erection of a practicable hydro-electric project, and the conflict between the United States and the petitioner which has culminated in a condemnation suit by the former to acquire the Markham's Ferry land. Like the alleged compromise negotiations, these matters are entirely *dehors* the record. Petitioner says that the alleged condemnation proceeding presents the same question as here, but that cannot be true, because here the United States is not the condemnor. Moreover, it is not ground for rehearing that this Court's denial of petition for writ of certiorari in the case at bar has *strengthened* the petitioner's claim for compensation in this other case.

The petitioner's request that the Court lay down rules in the case at bar which will not only serve as guides in similar litigation, but also in dissimilar litigation, is unreasonable and at variance with judicial precedent. The Court's denial of the petition for writ of certiorari has settled the law with all necessary definiteness.

(3) & (4) The petitioner's arguments, numbers 3 and 4, are mere repetitions of arguments heretofore made at greater length in both petitioner's brief in support of petition for writ of certiorari and that of the United States as *amicus curiae*. These arguments are answered at pages 6 to 9 of respondent's brief; heretofore filed in reply to petitioner's brief, and presumably were rejected by this Court in denying the petition for writ of certiorari.

(5) Again the petitioner departs from the record, and asserts that the state court's decision in the case at bar will add substantially to the cost of numerous projects which petitioner claims the United States may construct in Oklahoma, to an aggregate estimated cost of \$600,000,000. There is not only no proof and no reference to official documents to support the claim that the United States has any such intention, but also there is no proof and no claim that in any of the other projects the defendant landowner owns or will own all of the land necessary to a dam, that any circumstances exist at any of these sites tending to show that the private construction of a hydro-electric project was feasible and reasonably probable within the reasonably near future, that any of the sites had or have a value for power purposes, or any other facts to support petitioner's assertion that the state court's decision in the case at bar will add to the cost of those developments. Moreover, such evidence, if submitted, would have been rejected as irrelevant. The petitioner's argument, in essence, is that the true value of the landowner's property need not be paid if it will cost the government-condemnor more—a patent absurdity.

The petition for rehearing and brief and argument in support thereof consist only of irrelevancies and repetitions of invalid arguments, and should be denied.

Respectfully submitted.

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